IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 164 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

GAURANG MATHURBHAI LEUVA and 4 others.

Appearance:

Ms. B.R. Gajjar, APP for Petitioner

MR JB PARDIWALA for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 04/05/99

ORAL JUDGEMENT

Being aggrieved by the order dated 1st March 1999, passed by the learned Additional Sessions Judge at Gandhinagar, exhibiting the document over-ruling the objection raised by the prosecution, while recording the evidence of Manojkumar Chhanabhai Kapadia (Ex.28) in Sessions Case No. 27/98 on his file, the present revision application is filed. Necessary facts, in order to appreciate the rival contentions, may in brief be stated.

2. Pertaining to the charge of the offences u/s. 498A & 306, I.P. Code framed, when evidence in Sessions

Case No. 27/98 was being recorded by the Additional Sessions Judge at Gandhinagar, the learned advocate for the respondents who are the accused in that Sessions Case, asked certain questions in the cross-examination of the aforesaid witness and got the letters written by the victim Anjuben admitted and exhibited. At that time the learned Special Public Prosecutor, Shri Patel objected against admission of the documents giving exhibit submitting that he wanted to Re-examine the witness putting the questions which could be asked in the cross-examination getting him declared hostile, and so long as his such Re-examination was not over, and the court was not satisfied about the reliability of the evidence on the point, the letters & cards in question could never be exhibited. Disagreeing with the objection raised, the learned Judge exhibited the letters and greetings cards as Exhibits 30 to 38. The cross-examination was then over. Immediately thereafter the learned Public Prosecutor sought time making it clear to the Court that he wanted to prefer the revision before the High Court. His request for time was then accepted. The evidence recorded till that stage was read over and explained to the witness, and the learned Judge then signed the deposition. This Revision application is therefore filed calling in question the legality & validity of the order overruling the objection raised. The crucial point raised for consideration is whether Revision Application can lie if the lower court exhibits and admits a document in evidence or refuses to admit & exhibit.

3. Assailing the order of the learned Judge, Ms. Katha Gajjar, the learned APP contends that the letters and greeting cards were not proved in accordance with the provisions of Section 47 and 67 of the Indian Evidence Act. Further, without affording the opportunity to the prosecution to cross-examine the witness, the documents when exhibited cannot in law be said to have been exhibited legally. In reply, the learned advocate, Mr. J.B. Pardiwala submits that this revision application is not maintainable at all because the order in question is the interlocutory order and so in view to Section 397(2) of the Criminal Procedure Code the powers conferred cannot be exercised. He also supported the impugned order.

4. Whether the order in question can be said to be the interlocutory is the question posed before me for consideration. The expression "interlocutory order" is not defined in Cr.P. Code. In order to judge whether the particular order is interlocutory or otherwise, the

Court has to, making every endeavour, find out whether the order in question is interlocutory order. If it is found that the order passed is purely interim or temporary in nature which does not decide or touch the important rights and liabilities of the parties and give a final shape to a particular point at a particular stage during the course of the hearing the same can be termed interlocutory order. If the order substantially affects the rights and liabilities of the parties it would not be the interlocutory order. It may also be stated that intermediate or quasi-final order which determines a particular issue finally at any stage of the hearing will not fall within the ambits of `interlocutory order'.

5. When the court finds that a particular document tendered in evidence by the witness is duly proved in accordance with the provisions of the Evidence Act or the provisions of other Statutes applicable, the Court may exhibit the same so that the same can be considered while disposing of the matter finally. About the meaning of the word "exhibit", a question arose before the Calcutta High Court in the case of Rakhaldas Pramanick v. Sm. Shantilata Ghose and others - AIR 1956 Calcutta 619 wherein it is made clear that "Exhibit" means a document exhibited for the purpose of being taken into consideration in deciding some question or other in respect of the proceeding in which it is filed. Let me therefore make it clear that the document when it is exhibited, the Court, while exhibiting the same does not finally decide the rights of the parties, or form any opinion, or express any opinion on the document or on the point that arises for consideration. In short, no legal complexion is given to the issues that arise for consideration. After the hearing is over, while finally adjudicating, the Court is free to discard a particular document holding that it was not duly proved or holding that the document was partly proved namely, execution alone thereof was proved, but as the contents thereof were not proved, the same cannot be taken into account. If either of the parties later on files during the course of the hearing an application to expunge the document admitted in record, the court may hearing the parties expunge the same if it finds that the document is not legally and correctly proved & exhibited. In short, by exhibiting the document merits or demerits thereof are not dissected, and the rights and obligations of the parties are not finally decided, or legal complexion is not given to the issue that arises for consideration as giving exhibit to the document is the procedural aspect of the matter and it merely shows that document is formally proved. The rights & obligations of the parties

are to be decided while finally appreciating the evidence for the purpose of pronouncing final verdict. In view of the matter, the order passed, admitting the letters and greeting cards, in evidence can be said to be the interlocutory order.

6. Some of the decisions on the point in support of my such view may be referred to. In the case of Indra Nath Guha v. State of West Bengal - 1979 Cri. L.J. NOC 129 (CAL.),when likewise question was raised with regards to the admissibility of the oral evidence, it is held that the order concerning the admissibility of oral evidence is an interlocutory order and not the final order. This decision can mutatis mutandis be made applicable to the documentary evidence also. The Allahabad High Court in the case of Bhaiyalal v. Ram Din - AIR 1989 Allahabad 130 has held that by mere fact the document is exhibited, it does not follow that the Court stands precluded from examining the question on the basis of evidence led by the parties whether the document in question was exempted by the party by which it purports to have been executed. The fact that document is exhibited, it merely establishes that it has been formally proved. But where the execution of the document is challenged, the court of fact is clearly entitled to weigh the evidence led by the parties and decide whether the document was really executed by the party alleged to have executed the same. In Manohar Nath Sher v. State of J. & K. - 1980 CRI. L.J. 292, it is held that order allowing or disallowing the production of the document does not put an end to proceedings in which the order is made. Such an order is only a step in the proceeding and it relates to a procedural matter and does not purport to decide the rights of the parties. Such an order is the interlocutory order and revision against the same is not maintainable. The High Court of Lahore in Robert Cameron Chamarette v. Mrs. Phyllis Ethel Chamarette - A.I.R. 1937 Lahore 176 has held that admissibility of a particular evidence is the interlocutory order which can subsequently be held to be inadmissible though ofcourse it is not so done often. All these decisions abundantly make it clear that the document if exhibited by the Court passing the order, the order which is passed would be the interlocutory order and not the final order determining the rights and liabilities of the parties finally because subsequently either of the parties can question the genuineness of the document and in that case it is open to the Court to accept or discard the document having due regards to the facts and circumstances on record. This revision application against the order in question is, therefore,

in view of Section 397(2) of the Criminal Procedure Code is not maintainable, as the order in question is the interlocutory order.

7. It is contended by the learned APP, that the document can be exhibited only after the other side cross-examines the witness, or re-examines the witness as the case may be. The document ought not to have been exhibited as prosecution was not given the chance to Re-examine putting the question which can be put in cross-examination. The contention does not gain a ground to stand upon. Neither any procedural law nor any provision of the Evidence Act mandates to exhibit the document only after the other side assails, either in the cross-examination or in the re-examination, the statements made by the witness qua the proof of the document and the Court is satisfied about the reliability of the evidence in that regard. Whatever may be the stage of the examination, if the document is found to have been duly proved because of necessary statements regarding proof thereof having been made by the witness, the Court may exhibit and admit the same in evidence apart from the question of its appreciation later on, or challenge to be made by the other side which has been sought to be done in the present case. The contention therefore must fail. It may be mentioned that the right of the prosecution to assail the exhibition of the document is not curtailed or taken away by such observation.

8. As per Sec. 67 of the Indian Evidence Act a document is required to be proved in the manner provided by Sec. 45, 47 or 73 of that Act or by internal proof afforded by its own contents. Sec. 47 provides different methods of proving the handwriting of a person. Under Sec. 67 if a document is signed by a person or written wholly or in part by any person, the signature of that person or handwriting of that person must be proved to be in his handwriting. If Sections 47 and 67 of the Evidence Act are read together, what can reasonably be deduced is that the signature of a person on a document can be proved either by examining the person in whose presence the signature was affixed, or else by examining another person who is acquainted with the handwriting of the executant of the document, or the person alleged to have written the document and is able to prove his signature by his opinion. When Sections 45 & 47 of the Evidence Act are read together, what can be deduced is that for proving the handwriting and signature the opinion of the expert and of the persons acquainted with the handwriting of that person are relevant.

9. Aforesaid witness in his deposition when he was asked necessary questions testified his acquaintance with the handwritings of the victim. The learned Judge, having been satisfied about the requirements of the aforesaid sections admitted in evidence & exhibited the letters & greetings card. I do not think it is just and proper to give any final complexion to the point raised keeping Sections 47 & 67 in mind, holding whether signature and/or the writing of the body of the letters & cards are formally proved, or whether entire letters & card are formally proved, along with the truth of the contents thereof, because at this stage the learned APP for the petitioner submits that the point may be kept open as the prosecution would like to with the permission of the court put some question in Re-examination qua the statements about the proof of letters & card made by the witness.

10. Faced with such situation, the learned APP contends that this application may be treated to be the application under Section 482 of the Criminal Procedure Code and the Court may exercise the discretionary powers for imparting the real justice. In support of her contention, she relies upon the decision of the Supreme Court rendered in the case of Krishnan & Anr. Vs. Krishnavedi & Anr. - 1997 (1) Crimes 97 (SC), wherein it is held that if the revision before the High Court is prohibited by sub-section (3) of Section 397 of Criminal Procedure Code, it is open to the High Court to treat the application under Section 482 of the Criminal Procedure Code and interfere with the order provided the same leads to miscarriage of justice. It is made clear that such exercise of powers should be sparingly made. The decision cited will not apply to the case on hand. The decision cited is applicable only when Section 397 (3) of the Criminal Procedure Code comes into play. As per that Section, if the revision application is filed in the Sessions Court having the concurrent jurisdiction, another revision application by the same person, if filed in the High Court, the same cannot be entertained, and in that case powers u/s. 482 can be exercised by the High Court for doing real justice. In this case such a type of revision application was not filed in the Sessions Court and obviously not filed because the order of the Sessions Court is challenged. However, in view of the decision of the Supreme Court in the case of Madhu Limaye Vs. State of Maharashtra - AIR 1978 S.C. 47 exactly applicable to the point raised, the application can well be treated to be the application under Section 482 because the power under Section 397(2) will not operate

to prevent the abuse of the process of the court and/or to secure the ends of justice. The label given to the petition filed by the aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers.

11. The next question that arises for examination is whether to secure the ends of justice or to prevent the abuse of the process of the Court, this court should exercise its inherent powers. The learned advocate representing the respondent in the lower court asked necessary question qua the document namely the letters and greeting cards while cross-examining the witness. The learned Judge found that the documents were duly proved and were required to be exhibited. When accordingly the documents are exhibited over-ruling the objections raised, the order cannot be said to be perverse or arbitrary or manifestly infirm and thereby it cannot be said that one or the another party has abused the process, or that lower court arbitrarily exercised the powers vested. Further by such order, no prejudice is going to be caused to the prosecution because it is open to the court to discard the evidence later on having regard to the other evidence, facts and circumstances on record or it is open to the prosecution to pray for expunction of the documents, namely the letters & cards exhibited and challenge genuineness or reliability thereof. It may be stated that in re-examination, with the permission of the Court, the prosecution, keeping Sections 154 & 155 of the Evidence Act in mind, may ask necessary questions on matters which have arisen in the cross-examination, and impeach the credit of the witness. It is therefore open to the petitioner to ask in Re-examination necessary questions which can be asked in cross-examination by the adverse party with a view to explore as to how he was acquainted with the signature and handwriting and assail the veracity of the witness and show to the court that the witness stating on the proof of the document is not reliable and has not deposed to the truthfulness of the execution & contents of the document; consequently the document already exhibited is required to be expunged. When that efficacious remedy is available, this court will be loath in exercising the inherent powers. For this reason, there is no miscarriage of justice, and that is also the ground not to exercise the powers under Section 482, Cr.P. Code. In any case, therefore, this Revision application challenging the order admitting & exhibiting the document in evidence cannot be entertained.

12. For the aforesaid reasons, this application being

not maintainable, is hereby dismissed. Rule is discharged.

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